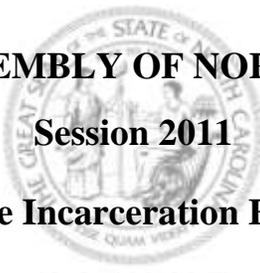


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 49 (First Edition)

SHORT TITLE: Laura's Law.

SPONSOR(S): Representatives T. Moore, Torbett, Hastings, and H. Warren

	FISCAL IMPACT				
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
<b>REVENUE:</b>	<b>Exact amount cannot be determined*</b>				
<b>EXPENDITURES:</b>					
Correction	<b>Exact amount cannot be determined*</b>				
Probation	<b>Exact amount cannot be determined*</b>				
Judicial	<b>Exact amount cannot be determined*</b>				
<i>*See Assumptions and Methodology</i>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:

The proposed legislation provides that a defendant subject to Aggravated Level One punishment may be fined up to \$10,000 and will be sentenced to imprisonment, including a term of not less than 120 days and not more than 36 months. The act also makes a defendant sentenced under Aggravated Level One punishment ineligible for parole. The act allows suspension of the imprisonment term only if a special probation condition is imposed, requiring the defendant to serve a term of imprisonment of at least 120 days. The act prohibits crediting the time a defendant spent at an inpatient treatment facility toward the defendant's Aggravated Level One sentence.

Additionally, the act amends G.S. 20-179 (pertaining to sentencing hearings for impaired driving convictions; determination of grossly aggravating, aggravating, and mitigating factors; and punishments) to require a judge, in a sentencing hearing, to impose the Aggravated Level One punishment under proposed G.S. 20-179(g), if the judge determines that three or more grossly aggravating factors apply. The act also amends G.S. 20-179(h1) to allow a judge to impose, as a condition of probation for defendants subject to Aggravated Level One, Level One, or Level Two punishments, that the defendant abstain from alcohol consumption for at least 30 days through the term of probation (was, to a maximum of 60 days). The proposed legislation removes the provision limiting the total cost to the defendant for the continuous alcohol monitoring system to \$1,000. The act also removes the provision allowing the court to waive application of the continuous alcohol monitoring system when the court determines that the defendant should not pay for the system, and the responsible local government does not pay.

The proposed legislation amends G.S. 20-19(e) (concerning circumstances of license revocation) to add the following circumstance to those resulting in permanent license revocation: when a person's license is revoked under G.S. 20-17(a)(2) (concerning impaired driving offenses) and the person was sentenced under the Aggravated Level One punishment (proposed G.S. 20-179(g)) for the offense resulting in the license revocation.

The act also amends G.S. 20-17.8 to restrict a person sentenced under the Aggravated Level One punishment to operating vehicles equipped with functioning ignition interlock systems, and to require that the person not drive with an alcohol concentration greater than 0.0.

Furthermore, the act amends G.S. 7A-304(a) (regarding costs in criminal actions) to impose a cost of \$100 on a defendant convicted under G.S. 20-138.1 or G.S. 20-138.2 (for impaired driving), or a second or subsequent conviction under G.S. 20-138.2A or G.S. 20-138.2B (operating a commercial vehicle, school bus, or child care vehicle after consuming alcohol), in every criminal case in the superior or district court, as indicated.

The proposed legislation becomes effective December 1, 2011, and applies to offenses committed on or after that date.

*Source: Bill Digest H.B. 49 (02/08/2011).*

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

However, the Sentencing and Policy Advisory Commission was unable to prepare prison population projections for the proposed legislation. DWI's are not punished under Structured Sentencing, so the Sentencing Commission does not have any DWI offender data. As a result, the

Department of Correction Office of Research and Planning was asked to estimate the fiscal impact of the proposed legislation.

## **Department of Correction**

### **Methodology:**

To estimate eligibility for Aggravated Level One punishment, the Department of Correction Office of Research and Planning (DOC) examined 519 entries to prison with DWI Level One as their most serious offense in FY 2009-10. DOC reviewed the offender's commitments and arrest record to determine the following:

1. Whether the offender had any prior DWI offenses and instances of concurrent driving while license revoked charges;
2. Whether, at the time of the offense, the defendant's impaired driving caused serious injury to another person; and
3. Whether, at the time of the offense, the defendant was driving while a child under the age of 16 years was in the vehicle.

Inmates were assigned one factor for each prior offense, and one factor for each aggravating condition, then the factors were summed for each inmate. Inmates with a total of three or more factors were placed in Aggravated Level One for the purposes of this analysis. Inmates with only two factors remained in Level One in order to compare the impact of the act. In total, DOC estimated that 275 would be re-assigned to Aggravated Level One punishment.

For inmates who remained in Level One, the estimated new sentence remained the same as the current sentence. The bill increases the maximum sentence for DWI Level One crimes from 730 days to 1,095 days. Under the old law, Level One inmates served approximately 33% of the 730 day maximum sentence; non-paroled Level One inmates served approximately 41% of the 730 day maximum sentence. To estimate the amount of time that may be served by Aggravated Level One inmates, the new sentence was multiplied by the expected percent of sentence served by non-paroled Level One inmates (41%) and by the expected percent of sentences served by all Level One inmates (33%) for inmates who remained in the Level One category. For inmates who would be re-assigned to Aggravated Level One punishment, DOC estimated that offenders would serve an additional 171 days. The cost of the additional days for offenders in the Aggravated Level One punishment was estimated by multiplying the number of potential days served by \$14 per day per inmate.

### **Findings:**

Using the methodology above, 275 of the 519 offenders (53%) would be re-assigned to Aggravated Level One punishment. The estimated total cost of 171 additional days is \$658,350 per year (171 days x \$14 per day x 275 offenders).

### **Other Issues/Concerns:**

Inmates convicted of DWI Level One may enter prison with some other crime as the most serious offense. During FY 2009-2010, there were 118 inmates who entered prison with a Level One conviction to be served concurrently or consecutively to a more serious crime. Of these inmates,

DOC estimates that 61 (51.7%) would be eligible for Aggravated Level One. The changes in sentence range for inmates convicted of Aggravated Level One may extend these inmates stay in prison, depending upon the sentence received for other crimes. DOC was unable to estimate the impact for these inmates at this time.

**Judicial Branch**

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

**Aggravated Level One Case Estimates:**

Under current law, a judge must impose the Level One punishment under subsection (g) of this section, if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies.

For Calendar Year 2010, AOC data shows the following:

DWI Level	Grossly Aggravating Factors*	Defendants Convicted**	Percent of Total
Level 1	2 or more	3,939	9.5%
Level 2	1	6,215	14.9%
Levels 3 - 5	none	31,528	75.6%
Total		41,682	100.0%
<b>Level 1 as % of Levels 1 &amp; 2</b>			<b>38.8%</b>

\*AOC data does not contain details on the number of grossly aggravating factors found or alleged. However, G.S. 20-179 requires a Level One conviction if two or more grossly aggravating factors are found and a Level Two conviction if one grossly aggravating factor is found.

\*\*Note: Typically, Judicial cost estimates are based on charges, rather than convictions. However, since a Level One or Level Two DWI conviction is determined at sentencing based on findings of grossly aggravating factors, in this instance convictions are a more appropriate measure of workload.

Overall, in 2010 DWI convictions with any grossly aggravating factors accounted for 28% of all DWI convictions, and DWI convictions with more than one grossly aggravating factor accounted for 39% of all DWI convictions with grossly aggravating factors (or 10% of all DWI convictions). AOC cannot determine the number of Level One convictions that had at least three grossly aggravating factors.

Elevation from Level One to Aggravated Level One carries the potential for a substantial increase in punishment. In general, AOC expects that an increase in punishment will lead to a more vigorous defense, thus requiring more time on the part of court personnel. However, the district attorney is already obligated to introduce all aggravating and grossly aggravating factors of which he is aware, and anecdotal evidence suggests that DWI charges are already defended vigorously.

Therefore, AOC does not anticipate that this portion of the bill will significantly impact court workload at the time of conviction.

However, because this legislation increases the maximum fine amount and increases court costs, it is likely that the violation rate for some DWI probationers would increase, resulting in more court hearings on those violations. The number or impact of such hearings cannot be projected. There will be some one-time programming and form changes to include the new offense in the necessary reports to DMV. These costs are not anticipated to be substantial.

**Elimination of Duration and Cost Caps for Continuous Alcohol Monitoring (CAM):**

G.S. 20-179(h1) – (h3) currently provide that, when imposing a Level One or Level Two punishment for conviction of DWI, the court may impose a condition of probation that the defendant abstain from the consumption of alcohol for up to 60 days. The defendant’s compliance with this condition is to be monitored by the use of a continuous alcohol monitoring system (CAM) approved by the Department of Correction. The costs (up to \$1,000) are borne by the defendant or, if the court finds for good cause that the defendant should not bear the costs of CAM, by the local government entity responsible for his incarceration. If neither the defendant nor the local government can bear the costs, the judge may not require CAM. The costs of CAM are paid to the Clerk of Court for distribution to the vendor providing the monitoring system.

Section 1 would amend the current CAM provisions in G.S. 20-179 to eliminate:

- The cap of 60 days (proposed: CAM could be imposed for the duration of probation);
- The \$1,000 cap on CAM costs (proposed: no limitation); and,
- The provision that CAM may not be imposed if there is no party available to pay for it (proposed: unknown; there is no clear authority to assess costs or their allocation).

By repealing G.S. 20-179(h2) and the assessment of costs in subsection (h1), it is unclear how costs for CAM would be assessed or allocated to a responsible party. Subsection (h3) would continue to provide that “any fees or costs paid under subsection[s] (h1)” would be collected by the clerk and paid to the CAM vendor. If the intention of the bill is that the costs of CAM would be assessed against the defendant, it is possible that judges would be less likely to impose as a condition of probation that offenders abstain from alcohol consumption under 20-179(h1). AOC cannot project the impact of this potential change in terms of other conditions that might be imposed instead, or on any resulting impact on probationer compliance and behavior. Any increase in probation revocation hearings would impact court workload.

**New Court Fee for Impaired Driving Convictions:**

DWI offenders are subject to multiple court costs in addition to any amounts imposed for fines, restitution, or attorneys’ fees. With a new fee, revenue projections must take into account those offenders who currently pay in full, but would not ultimately pay the full additional \$100. In addition, it is important to note that costs due the State are toward the end of the priority order, and DWI probation terms are more than one year. Therefore, AOC would expect to see a gradual increase in revenue over the first three fiscal years. For this estimate, AOC has focused on defendants convicted in FY 2008-09 and their payments through FY 2009-10.

Due to data limitations, AOC is unable to determine the exact number of DWI offenders convicted in FY 2008-09 who paid in full by FY 2009-10. This is due to the court's focus on offender compliance with all terms of probation, rather than solely on money collected. Offenders may have received some reduction or waiver of fees and complied in full with the judgments rendered, and some defendants may still be on probation and making payments.

At this time, AOC estimates that 23,200 defendants convicted in FY 2008-09 of the applicable offenses paid the full General Court of Justice fees owed. If all 23,200 paid the additional \$100 fee, total revenue from defendants sentenced in the first 12 months of implementation would be \$2.32 million, collected over 24 months. (Note: effective date is December 1, 2011, so collections would be spread over three fiscal years.)

However, it is likely that some of the offenders would pay only part of the new fee, or that collections would be diminished in other accounts with lower priorities. If the equivalent of 50% paid the full fee, collections from that group would be \$1.16 million, collected over 24 months. If the equivalent of 10% paid the full fee, collections from that group would be \$232,000, collected over 24 months.

Additionally, there will be a one-time impact on workload for information technology and legal staff, and ongoing impact on clerk workload, for any new fee that is imposed only on conviction of specific cases.

**SOURCES OF DATA:** Department of Correction Office of Research and Planning; Judicial Branch

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Sarah Stone; Kristine Leggett

**APPROVED BY:** Marilyn Chism, Director  
Fiscal Research Division



**DATE:** February 14, 2011

**Signed Copy Located in the NCGA Principal Clerk's Offices**